IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1230 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORBHAI RAMSINGBHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1230 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR SAMIR DAVE, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/03/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 12-11-2001 passed by the

Police Commissioner, Rajkot City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. She has mainly argued that the detaining authority has relied upon two prohibition cases registered against the petitioner in passing the order of detention. She has further contended that the representation dated 31-12-2001 sent through advocate to the detaining authority has been forwarded to the State Govt. on 3-1-2002 and said representation has been rejected by the State Govt. on 9-1-2002 which has been communicated to the detenu on 23-1-2002 and therefore, there is a delay in deciding and communicating the decision to the detenu. In this connection, she has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. It appears that the representation dated 31-12-2001 has been decided by the State Govt. on 9-1-2002 and same has been intimated to the petitioner on

23-1-2002 and hence, there is a delay in communicating the decision of the representation to the petitioner. Learned advocate for the petitioner has produced xerox copy of the communication which is ordered to be taken on record which supports the case of the petitioner. Since the said delay has not been satisfactorily explained by the authority, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds only on this point, learned advocate for the petitioner does not press other points.

5. The petition is allowed. The impugned order of detention dated 12-11-2001 passed against the detenu is hereby quashed and set aside. The detenu Kishorbhai Ramsingbhai Vaghela is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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